

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
STATESBORO DIVISION

WALTER WHITTEN,

Plaintiff,

v.

G.S.P. MEDICAL UNIT,  
Med Health,

Defendant.

CIVIL ACTION NO.: CV613-078

FILED  
U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF GA.  
2013 NOV 29 AM 11:27  
CLERK

**ORDER**


After an independent and *de novo* review of the entire record, the undersigned concurs with the Magistrate Judge's Report and Recommendation, to which Plaintiff filed Objections. In his Objections, Plaintiff asserts that he provided the Court with a list of the doctors' names on another piece of paper at a later time. A review of the docket does not support this assertion, as there has been nothing filed—other than Plaintiff's Objections—in which Plaintiff names individual doctors. Even if the docket supported this assertion and Plaintiff had named a proper Defendant, however, he cannot sustain an Eighth Amendment claim for the reasons set forth in the Magistrate Judge's Report and Recommendation. (Doc. No. 7, pp. 3–4). Finally, Plaintiff cites to a Georgia malpractice statute, O.C.G.A. § 9-3-70. To the extent Plaintiff wishes to assert a claim for malpractice, he cannot do so in this case.

Section 1983 imposes liability for violations of rights protected by the Constitution, not for violations of duties of care arising out of state tort law. Baker v.

McCollan, 443 U.S. 137, 146 (1979). Accordingly, Plaintiff's alleged state law claims cannot be sustained in the instant case. Even if this Court were inclined to exercise supplemental jurisdiction over Plaintiff's allegations of medical negligence or malpractice, it cannot do so. Plaintiff's state tort law claim must be accompanied by "an affidavit of an expert competent to testify, which affidavit shall set forth specifically at least one negligent act or omission claimed to exist and the factual basis for each such claim." Alba v. Montford, 517 F.3d 1249, 1254 (11th Cir. 2008) (citing GA. CODE ANN. § 9-11-9.1(a)). As Plaintiff has failed to meet this requirement, his state law claims should be dismissed for this reason, as well.

Plaintiff's Objections are **overruled**. The Magistrate Judge's Report and Recommendation, as supplemented herein, is adopted as the opinion of the Court. Plaintiff's Complaint is **DISMISSED** based on his failure to state a claim upon which relief may be granted. The Clerk of Court is directed to enter the appropriate judgment of dismissal.

SO ORDERED, this 20 day of Nov -, 2013.

  
B. AVANT EDENFIELD, JUDGE  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA